IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 3784 OF 2003

Dena Bank. .... Plaintiff.

vs.

M/s. Gayatri Enterprises & Ors. .... Defendants.

Mr. John Daniel for the Plaintiff.

CORAM : A.A. SAYED, J.

DATE : 06 AUGUST 2012.

P.C.

The suit is filed by the Plaintiff bank for recovery of a sum of Rs. 1,91,459/- with interest.

2. The Defendant No. 1 was granted Cash Credit Hypothecation (Stock) facility by the Plaintiff Bank. The

Defendant No. 4 is a guarantor. One Mr. H.M. Gokhani was also a guarantor and he executed a letter of Guarantee for repayment of amount due and payable by the Defendant No. 1. The said H.M. Gokhani expired and Defendant Nos. 2 and 3 are his heirs and legal representatives. The Cash Credit Hypothecation (Stock) facility was granted to Defendant No. 1 on or about 6 December 1995 to the extent of Rs. 2 lakhs for business purposes.

3. The Defendant No. 1 executed the usual security documents, viz., Demand Promissory Note, Letter of Continuity, Agreement of Hypothecation, Agreement of Hypothecation of moveable Plant and Machinery. An Account was also opened in the name of Defendant no. 1 by the Plaintiff Bank wherein the Plaintiff bank duly debited the amount lent and advanced to the Defendant No. 1 and also have given credit accordingly.

4. Though the facility was duly availed of by the Defendant No. 1, the Defendant No. 1 committed defaults and the Account became irregular and inspite of requests and remainders failed and neglected to pay the balance due. Advocate's notices dated 10 April 2002 and 16 June 2003 were also addressed. The amount, however, remained to be paid. The Defendant No. 1 deposited an amount of Rs. 5000/- in the Account on 23 November 2000.

5. The Defendants have failed to file appearance and Written Statement despite service of Writ of Summons. The claim of the Plaintiff has gone uncontroverted. The suit is listed for exparte decree.

6. The Plaintiff has filed an Affidavit in lieu of Examination-in-Chief and Compilation of original

documents and the claim of the Plaintiff stands proved on the basis thereof. The Plaintiff has made out a case for grant of reliefs and they are entitled to a decree under Order VIII Rule 10 of the Code of Civil Procedure, 1908.

7. The suit is decreed in terms of prayer clause (a) with the modification that the Plaintiff Bank shall be entitled to interest at the rate of 10% per annum from the date of filing of the suit till payment and/or realisation and with a further modification that the Defendant Nos. 2 and 3 shall be liable only to the extent of the assets of the deceased H.M. Gokhani which have come to their hands.

(A.A. SAYED, J.)